

**Mark P. Madsen**

**v.**

**Town of Goffstown**

**Docket No.: 11209-91 PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$109,700 on a condominium unit in The Sablebrook Condominiums (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property would never sell for the assessed value; and
- (2) a similar unit sold in August, 1992 for only \$78,000, and another unit, identical in construction, was listed for sale for only \$73,900 in August,

1992.

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The Town argued the assessment was proper because:

- (1) the assessment is consistent with other units in The Sablebrook Condominiums and in the Town; and
- (2) comparable units sold within the acceptable range and support the Property's assessment.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board did not consider the inspector's report.

#### Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$97,600. This assessment is ordered because the board finds both the Taxpayer's and the Town's sales support the Taxpayer's assertion that the Property is overassessed. Based on this information, the board finds the fair market value of the Property as of April 1, 1991 to be \$80,000. Neither party challenged the Department of Revenue Administration's (DRA) equalization ratio of 122% for the 1991 tax year. The Town, in their written brief, estimated the DRA equalization ratio for the 1992 tax year to be 134% when in fact it

was 126%. The sales analysis prepared by the Town indicates that condominiums may have declined more in value than other properties in the Town.

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The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town.

RSA 75:8 states:

The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value, and shall correct all errors that they find in the then existing appraisal, in the year next preceding \*\*\*.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

If the taxes have been paid, the amount paid on the value in excess of \$97,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but

generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark P. Madsen, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: January 11, 1994

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Lynn M. Wheeler, Deputy Clerk

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